IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY APPLICATION NO. 836 OF 2006
IN
COMPANY PETITION NO. 409 OF 1983

The Board of Trustees of the Port of Kolkata. ... Applicants.

V/s.

The Official Liquidator, High Court, Bombay, liquidator of M/s. Patterson Engineering Co.(I) Ltd. & Ors.. ... Respondents.

....

Mr. Umesh Shetty with M.H. Munje i/b. Mulla & Mulla for the Applicant.
Mrs. K.V. Gautam, Dy. O.L.

....

CORAM : DR. D.Y.CHANDRACHUD,J.

21st April 2007.

P.C. :

. This application before the Court has been instituted by the Board of Trustees for the Port of Kolkata. The principal relief that has been sought is a direction to the Official Liquidator to hand over vacant and peaceful possession of certain plots of land described as plate no.HL 274, HL 274/1/A, HB 17/1 including a godown and HB 5/1/A comprising Bore Well space and more particularly

described in paragraph 1 of the affidavit in support.

2. The facts are thus :

(A) On 16th June 1966 the Applicant gave on lease to M/s. Patterson Engineering Co. (India) Ltd. (presently in liquidation) for a period of 5 years, a godown space situated on the land bearing Plate No.HB 17/1 admeasuring 4687 sq.ft. or 435.44 sq.mtrs. situated at 109, Foreshore Road, Ramkrishnapur, Thane, Sibpur District and Registration District Howrah.

(B) Besides the above godown, the Applicants herein had given on monthly lease to Patterson Engineering Co. (India) Ltd. (presently in liquidation), 2 plots of land bearing Plate No.HL 274 and HL 274/1/A respectively admeasuring 416.30 sq.mtrs. and 16.820 sq.mtrs. at 109, Foreshore Road, Ramkrishnapur, Thane, Sibpur District and Registration District Howrah.

In addition to the above, the Applicants had also granted permission to the said Patterson Engineering Co. (India) Ltd. (presently in liquidation), to sink a tube well on the south side of Plate No.HB 17/1 on payment of Way leave charges and the same is identified as Plate No. HB 5/1/A.

(C) On 1st February 1972 the Applicant issued an ejectment notice to the said Company determining the period of lease in respect of Plate No.HL 274/1/A.

(D) On 1st January 1978 the Applicant issued an ejectment notice to the said Company in liquidation determining the lease/allotment/way leave permission in respect of Plate Nos. HL 274, HB 17/1 and HB 5/1/A.

(E) On 12th December 1984 this Court ordered the winding up of the Patterson Engineering Co. (India) Ltd. and the

Official Liquidator, High Court, Bombay was appointed as liquidator in respect of the said company.

(F) Prior to the order of winding up the said company had committed defaults in payment of rent in respect of the said Plate Nos.HL 274 from January 1976; Plate HL 274/1/A from November 1971; Plate HB 17/1 from January 1976 and HB 5/1/A from April 1976. Consequently, the said company in liquidation, as on the date of the filing of the Company Application, owed to the Applicants by way of rent/occupation charges/compensation/way leave charges and interest thereon as applicable as per the rules in force a sum aggregating to Rs.44,27,108.63.

(G) In addition, the said Company in liquidation is alleged to owe to the Applicants by way of lease rent/occupation charges/compensation/way leave charges, a sum of Rs.1,884.18 per month for Plate No.HL 274, Rs.84/- per month for Plate No.HL 274/1/A,

Rs.10,968/- per month for Plate No.HB 17/1 and Rs.1 per month for Plate No.HB 5/1/A respectively together with such increase as per the Schedule of rent notified by the Applicants from time to time together with interest @ 18% p.a. from the respective due dates till the date of handing over of the possession of the said Plates to the Applicants.

(H) On 16th December 1989, 2nd March 1990, 30th January 1991, 16th August 1991 and 19th December 2000 the Applicants addressed requests to the Official Liquidator, to pay the dues/occupation charges/compensation in respect of the said Plates. The Official Liquidator however did not pay the dues.

(I) On 9th February 2005; inspection of the said plots was carried out by the Applicants which revealed that Respondent Nos.2 to 7 are in occupation of various portions of the building/structures extending on the said plots of land and godown space

bearing Plate No.HL 274, HL 274/1/A, HB 17/1 and HB 5/1/A.

The present Company Application was filed on 12th September 2005, for recovering possession and other relief.

3. The Official Liquidator has filed two affidavits in reply in these proceedings. In the first affidavit in reply, the Liquidator has stated that the lands in question were given on lease to the Company Liquidation for a period of 5 years from 1st May 1962 under a Lease Agreement and it was not known as to why the Applicant had not taken any action since the expiry of the lease for recovering the lease rent and securing possession of the property. The Official Liquidator specifically stated that he has not taken possession of any of the immovable properties of the Company and it was contended that hence the Liquidator has not liable either to pay rent or to hand over possession. A further affidavit has been filed on 30th March 2007 after the liquidator took inspection of the property and it has been stated

therein that it was found that the property was in the occupation of the 7th Respondent. The Official Liquidator states that he has addressed letters interalia to the seventh Respondent to furnish details of its occupancy. The Official Liquidator has in the second affidavit claimed that since the structures and land belong to the company in liquidation, this Court may permit the Liquidator to appoint a Valuer. The Liquidator has stated that he would have no objection if the properties are handed over to the Applicant on the payment of such amount as may be determined by this Court in the report of the Valuer.

4. The narration of facts in the earlier part of the Judgment shows that the lands in question were leased out by the Board of Trustees of the Port of Kolkata (the Applicant) for a specified term. Clause (4) of the lease deed dated 16th June 1966 provides as follows :-

" The Lessees will at the expiration or sooner determination under the proviso herein contained of the said

term quietly yield up unto the Lessors the demised premises with all buildings, sheds and other erections and fixtures thereon that are now or may at any time be the property of the Lessors in such condition as they are now subject to reasonable wear and tear and with all reparations for which the Lessees are responsible as herein provided PROVIDED ALWAYS and it is hereby agreed that it shall be lawful for the Lessees prior to the expiration or sooner determination of the said term to pull down and remove all and every of the erections, structures and fixtures erected, constructed or set up by or belonging to the Lessees during the said term upon the demised premises PROVIDED THAT they shall restore the floor and/or walls whence any such removal shall be effected to such good condition as the same shall have been at the commencement of the said term

> and also that all property of the Lessees which shall not after the expiration or sooner determination of the said term be so removed as aforesaid shall remain and be for the use and benefit of the Lessors absolutely who shall be at liberty to retain, remove, sell or dispose of the same in such manner as they shall think fit without paying any compensation to the Lessees for or in respect of the same."

A provision for termination was made in clause 15 of the Lease Agreement.

5. The company has been ordered to be wound up by an order dated 12th December 1984. Consequent upon the order of winding up, the premises can by no stretch of imagination be stated to be required for the purpose of the company. In any event, acting in pursuance of the power of termination conferred upon the Lessor, the Applicant issued ejectment notices on 1st February 1972 and 1st January 1978.

The Liquidator has taken an inconsistent stand. In the first affidavit in reply, the Liquidator has denied taking possession of the land. In the second, the Official Liquidator claims that the structures on the land should be valued and the Applicant should be called upon to deposit the value thereof as determined by the Court. There is absolutely no merit in the submission that the Applicant is liable to pay the value of the structure having regard to the provisions of clause (4) of the Lease Agreement. Upon the expiry or sooner determination of the Lease, the Lessee was liable to remove the structures constructed thereon failing which the structures are to be meant for the use and benefit of the Lessors absolutely.

6. From the position which emerges before the Court, it also appears that the land is now in the occupation of a third party(ies). At one stage, the Liquidator stated that possession was never taken by him or on his behalf. In the circumstances, at this stage, Counsel appearing on behalf of the Applicant has submitted that the Liquidator may be called upon to hand over

possession of the lands together with the structures as set out in prayer clause (a) in whatsoever condition that they stand at present upon which the Applicant would initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or by taking such other remedies as are available in law against those in unauthorised possession.

7. The Official Liquidator is accordingly directed to hand over possession within a period of four weeks of the Plots bearing Plate Nos. 274, 274/1/A, HB 17/1 including godown and HB 5/1/A to the Applicant in the condition in which they stand at present. It is needless to add that the Applicant would be at liberty to initiate proceedings for securing peaceful possession in accordance with the rights and remedies available to it in law.

8. In so far as the claim for compensation or occupation charges is concerned, the Applicant would be at liberty to lodge its proof of debt before the Liquidator. Upon such a claim being

lodged, the Liquidator shall carry out an adjudication thereon in accordance with law. The Applicant, the Court has been informed shall file its claim within six weeks from the date on which an authenticated copy of this order is made available. The Official Liquidator shall adjudicate the claim within a period of four months thereafter.

9. An affidavit in respect of the service of the proceedings on Respondent Nos. 2 to 7 has been filed on the record. Despite service, the aforesaid Respondents have remained absent.

10. The Company Application is accordingly disposed of.